

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ANTWAN HICKS,

Plaintiff,

v.

9:23-CV-0853  
(MAD/ATB)

JOHN DOE #1, et al.,

Defendants.

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APPEARANCES:

ANTWAN HICKS  
Plaintiff, pro se  
22-B-1637  
Attica Correctional Facility  
Box 149  
Attica, NY 14011

MAE A. D'AGOSTINO  
United States District Judge

**DECISION and ORDER**

Plaintiff Antwan Hicks commenced this action by filing a pro se complaint for relief pursuant to 42 U.S.C. § 1983 ("Section 1983"), together with an application to proceed in forma pauperis ("IFP") and a motion for appointment of counsel. Dkt. No. 1 ("Compl."); Dkt. No. 2 ("IFP Application"); Dkt. No. 4 ("Motion for Counsel"). By Decision and Order entered on August 16, 2023, plaintiff's IFP Application was granted, and after screening the complaint in accordance with 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), the Court dismissed plaintiff's claims for failure to state a claim upon which relief may be granted. Dkt. No. 6

("August 2023 Order").<sup>1</sup>

In light of plaintiff's pro se status, he was afforded thirty (30) days to submit an amended complaint. *Id.* at 10, 12. Plaintiff was advised that any amended complaint submitted in response to the August 2023 Order must set forth a short and plain statement of the facts plaintiff relies on in support of his claims that the defendants violated his constitutional rights. *Id.* at 11. Plaintiff was further advised that if he failed to file a proper amended complaint within thirty (30) days, the Clerk would enter judgment dismissing this action without prejudice due to his failure to state a claim upon which relief may be granted and to comply with the terms of the August 2023 Order, without further order of this Court. *Id.* at 12.

Thereafter, plaintiff filed a letter advising that he "would like to have this [action] dismissed and re-file [it] with [his] attorney." Dkt. No. 8 ("Dismissal Letter"). By Decision and Order entered on October 11, 2023, the Court construed the Dismissal Letter as a request to voluntarily dismiss this action pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure and denied the request on the grounds that, at the time the letter was filed, there were no claims pending in this action for plaintiff to voluntarily dismiss. See Dkt. No. 9 ("October 2023 Order"). The Court further advised plaintiff that this action would be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted, without further order of this Court, unless he filed a proper amended complaint in accordance with the August 2023 Order within thirty (30) days. *Id.* at 5-6.

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<sup>1</sup> In light of the dismissal of plaintiff's claims, the Court denied plaintiff's Motion for Counsel. See August 2023 Order at 11-12.

More than sixty (60) days has passed since the Court issued the October 2023 Order, and plaintiff has not filed an amended complaint. Plaintiff did, however, recently file a notice of change of address. See Dkt. No. 10. In light of this submission, and out of an abundance of solicitude, plaintiff's deadline to file an amended complaint in accordance with the August 2023 Order is reset to thirty (30) days from the date of this Decision and Order. Plaintiff is advised that this action will be dismissed **without prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted and failure to comply with prior court orders, without further order of this Court, **unless** he files a proper amended complaint in accordance with the August 2023 Order **within thirty (30) days**.

In the event plaintiff files a proper amended complaint, the Court will evaluate the claims asserted therein in accordance with 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b).

**WHEREFORE**, it is hereby

**ORDERED** that this action is **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted **UNLESS**, within **THIRTY (30) DAYS** from the date of this Decision and Order, plaintiff files a proper amended complaint in accordance with the August 2023 Order. If plaintiff does not timely file a proper amended complaint, the Clerk will enter Judgment dismissing this action **without prejudice**, without further Order of this Court, and close this case; and it is further

**ORDERED** that if plaintiff files a proper amended complaint, the Clerk shall return the

file to this Court further review; and it is further

**ORDERED** that the Clerk shall serve a copy of this Decision and Order on the plaintiff.

**IT IS SO ORDERED.**

Dated: December 26, 2023  
Albany, NY

  
Mae A. D'Agostino  
U.S. District Judge